IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8532 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANGAL INTERMEDIATES PVT LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 8532 of 2002
MR RAKESH GUPTA FOR M/S TRIVEDI & GUPTA for Petitioner No. 1-2
MR DN PATEL for Respondent No. 1,3
NOTICE SERVED BY DS for Respondent No. 2
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 22/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 Rule.

Mr.D.N.Patel, Learned Senior Central Govt. Standing Counsel appears and waives service of Rule for the respondents. At the request of the learned Advocates appearing for the respective parties this petition is finally heard today.

2 The petitioners have been constrained to approach this Court for ventilating their grievance to the effect that the petitioners were asked to pay a sum of Rs.10 lacs without issuing any demand notice or even a show cause notice. On account of coercion, the said amount was paid by the petitioners but when a further demand of about Rs.50 lacs was made, the petitioners have approached this Court.

3 In pursuance of the notice issued by this Court Mr.D.N.Patel, learned Senior Central Government Standing Counsel has appeared for the respondents. When a query was put to the learned Advocate for the respondents as to why the sum of Rs.10 lac was recovered from the petitioners without issuance of any show cause notice, or any demand notice, he could not show any document calling upon the petitioners to make payment of the said amount of Rs.10 lacs but it has been submitted by him that there was no threat or coercion as alleged by the petitioners for recovery of the said amount and the said amount was paid voluntarily during the pendency of investigation. It has been further submitted by him that during the pendency of this petition, a notice dated 5.9.2002 was given to the petitioners to make certain payments towards the duty liability in some cases.

4 We have heard the learned Advocates at length. It is not in dispute that no notice or show cause notice was issued to the petitioners when the petitioners had to make payment of Rs.10 lacs to the respondent authorities. It has been specifically submitted by Mr.Gupta for the petitioner that the petitioners were never ready and willing to make any payment as no amount was due and payable by them. Moreover, the investigation was going on and as there was no adjudication, the question of making any payment did not arise.

5 Even the letter dated 5.9.2002, which has been

addressed to the petitioners during the pendency of this petition, shows that the amount had been demanded without issuing any show cause notice. Mr.Patel for the respondents has submitted that the petitioners had availed some benefit on the basis of some forged documents. Mr.Gupta for the petitioners has submitted that till date the investigation is not over and no notice has been issued to the petitioners and therefore the petitioners cannot be made liable to pay any amount at this stage.

6. Looking to the above facts, in our opinion the petitioners cannot be saddled with any liability at this stage as the investigation is still going on and it can not be concluded that the petitioners had taken benefit on the basis of some forged documents.

7. We therefore quash and set aside the letter dated 5.9.2002 raising demand of tax. Needless to say that the investigation shall go on and if it is held that the petitioners are liable to pay any amount, the amount recoverable shall be recovered from the petitioners in accordance with law.

8. Rule made absolute with no order as to costs.

Sd/- Sd/-

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt